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*Additional counsel on signature pages*

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, *et al.*, individually and  
on behalf of all similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S OPPOSITION TO  
PLAINTIFFS' ADMINISTRATIVE  
MOTION TO SET HEARING DATE ON  
PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION (DKT. 609) AND  
OTHER PENDING MOTIONS**

Judge: Hon. Yvonne Gonzalez Rogers

1 Plaintiffs have needlessly burdened this Court with a simple scheduling issue. They ask the  
 2 Court to set a hearing date of Friday, September 30, 2022 for their Class Certification Motion and five  
 3 other motions, despite the facts that (1) Google’s counsel informed Plaintiffs that multiple key team  
 4 members are not available on that date, (2) the Court’s Standing Order makes clear that the Court  
 5 hears its Civil Law and Motion Calendar on Tuesdays at 2:00 p.m., and (3) at the August 26 hearing in  
 6 the related *Calhoun* matter, the Court informed the parties of its sizable trial commitments in  
 7 September. Google offered Plaintiffs Tuesday, October 11, 2022 or Tuesday, October 25, 2022 as  
 8 alternative dates. Plaintiffs have not indicated that they are unavailable on either date. Rather, they  
 9 claim they need an earlier hearing date in light of their concern that the Court will issue what Plaintiffs  
 10 perceive to be an unfavorable ruling on damages in *Calhoun* before they get to argue their motions.  
 11 *See* Mot. at 1, 3. That hypothetical scenario is no basis to demand the Court hear the motions on a  
 12 Friday, and that Google’s counsel rearrange their schedules (including canceling vacations),  
 13 particularly when Google has made clear that it can be available less than two weeks later, on  
 14 Tuesday, October 11, 2022.

15 Plaintiffs correctly note that the parties conferred during the week of August 15 regarding  
 16 whether a schedule was possible so that the motions currently set for hearing on September 27, 2022  
 17 (Dkts. 703, 705) (the “September 27 Motions”) could be advanced and combined with the motions  
 18 currently set for hearing on September 20, 2022 (Dkts. 609, 662-64) (the “September 20 Motions”).  
 19 Broome Decl. ¶ 2. Part of the agreement would have required Plaintiffs to file their additional motions  
 20 by August 19, 2022, but agreement on a stipulation was not reached and Plaintiffs filed their *Daubert*  
 21 motion (Dkt. 703) and motion to strike (Dkt. 705) on August 23, 2022. *See id.* ¶ 2 & Ex. 1.

22 Google never misrepresented its availability. Throughout the meet and confer process, Google  
 23 was prepared to proceed with Plaintiffs’ motion for class certification (Dkt. 609) and Google’s three  
 24 *Daubert* motions (Dkts. 662-64) on September 20, 2022. *Id.* ¶ 3. Google also agreed not to oppose  
 25 proceeding with Plaintiffs’ *Daubert* motion and motion to strike on September 27, 2022, even though  
 26 lead counsel Andrew Schapiro is unavailable on that date due to a Jewish holiday, because someone  
 27 other than Mr. Schapiro can argue the September 27 Motions. *Id.* ¶ 4. Google never agreed that the  
 28 September 20 Motions could proceed on September 27, 2022, or vice versa. *Id.* In fact, the draft

1 stipulation cited by Plaintiffs only represented that Google would not seek to reschedule the currently  
2 set hearing dates “based on these stipulated changes to these briefing schedules.” Pls.’ Ex. 2 at 1.

3 At the August 26 *Calhoun* hearing, Mr. Schapiro inquired whether the Court intended to  
4 proceed with the September 20, 2022 hearing. Broome Decl. Ex. 2 at 71:12-17. The Court indicated  
5 that it has three trials in September. *Id.* at 71:18, 73:5-6. The Court further indicated that the  
6 September 20 Motions and September 27 Motions would be heard together. *Id.* at 72:19-22, 73:3-6,  
7 74:9, 19-20. There is not enough time to fully brief the September 27 Motions in advance of the  
8 September 20, 2022 hearing date and given Mr. Schapiro’s unavailability on September 27, 2022,  
9 moving the September 20 Motions to September 27, 2022 does not work for Google’s lead counsel.  
10 *Id.* ¶ 6 & Ex. 2 at 73:11-20. Counsel for Google also indicated that it was unavailable on October 4.  
11 *Id.* Ex. 2 at 73:21-2; *see also id.* ¶ 6. The Court instructed the parties to meet and confer and find a  
12 date that worked for all. *Id.* Ex. 2 at 73:25-74:4. Google offered Tuesday, October 11 or Tuesday,  
13 October 25 for a hearing on all motions. *Id.* ¶ 7. Plaintiffs did not indicate – and have never indicated  
14 – that they are unavailable on either of those days. *Id.* Nevertheless, Plaintiffs rejected that offer,  
15 insisting that the hearing occur on a Friday in September, *id.*, even though the Court emphasized that  
16 Tuesday is the Court’s motion day, *id.* Ex. 2 at 74:13-17. In an effort to accommodate Plaintiffs’  
17 demand, Google canvassed its team for availability. *Id.* ¶ 8. However, multiple key team members  
18 (including those that will be arguing one or more of the motions) are not available on the two Friday  
19 dates Plaintiffs proposed (September 23 and September 30). *Id.*

20 Plaintiffs identify no prejudice from having the September 20 and September 27 Motions  
21 heard on October 11, 2022 or October 25, 2022. Their suggestion (Mot. 1) that Google is motivated by  
22 some strategic goal of obtaining one or more legal rulings in *Calhoun* prior to the *Brown* oral  
23 argument is baseless and bizarre, and certainly not a reason for convening such a critical hearing on  
24 dates when key Google counsel are not available. That is particularly true when everyone is  
25 apparently available on October 11, less than two weeks after Plaintiffs’ requested September 30 date.

26 Google respectfully requests that the Court deny Plaintiffs’ administrative motion, or in the  
27 alternative, sets a hearing date for October 11, 2022 or October 25, 2022.

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1  
2 DATED: August 30, 2022

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3 By /s/ Andrew H. Schapiro

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